

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





77-2028

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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EDMUND GETTENS, :

Petitioner-Appellant :

- against - :

JOHN QUINN, Acting Chairman of the :  
New York State Division of Parole, :

Respondent-Appellee :

----- -X

DOCKET NO. 77-2028

APPENDIX FOR PETITIONER-APPELLANT

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APPENDIX

|                                                                                 | <u>PAGE NO.</u> |
|---------------------------------------------------------------------------------|-----------------|
| MEMORANDUM AND ORDER DENYING PETITION                                           | A-1             |
| MINUTES OF SEARCH AND SEIZURE HEARING<br>IN NASSAU COUNTY COURT                 | A-10            |
| RULE 55, RULES AND REGULATIONS OF THE<br>VILLAGE OF HEMPSTEAD POLICE DEPARTMENT | A-112           |

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LEC  
CRIMINAL DIVISION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EDMUND GETTENS,

DOCKET NO. 76 C 1387

Petitioner,

- against -

JOHN QUINN, Acting Chairman of the  
New York State Division of Parole,

MEMORANDUM AND ORDER

Respondent.

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PRATT, J:

By habeas corpus, 28 USC §2254, petitioner seeks review of a judgment of conviction rendered on January 10, 1975 in the County Court, Nassau County, after a plea of guilty to the charge of attempted criminal possession of a controlled substance. The Appellate Division, Second Department, unanimously affirmed the judgment of conviction on January 28, 1976. Leave to appeal to the New York Court of Appeals was denied on March 4, 1976.

In support of his request for issuance of a writ of habeas corpus, petitioner contends that his fourth amendment right to be free from unreasonable search and seizure was violated and that he was denied a full and fair opportuni-



ty to litigate this claim at a state suppression hearing. This matter can be disposed of without an evidentiary hearing and, for the reasons set forth below, the request for habeas corpus relief is denied.

On May 16, 1974 the car in which the petitioner was a passenger was stopped by two patrolmen from the Hempstead Police Department because of a very noisy defect in the car's exhaust system. According to the testimony at the suppression hearing, after the patrolmen ascertained that neither the operator nor the passengers had a valid driver's license, the occupants were asked to get out of the car, now in a "no parking" zone, so that the car could be inventoried and impounded. In the course of checking the contents of the car, one of the patrolmen found a small manila folder containing marijuana at the edge of the driver's seat. The occupants were then placed under arrest and searched -- the patrolmen finding four marijuana cigarettes in petitioner's pocket. Further examination of the car revealed a larger bag of marijuana, small envelopes, and scales. Petitioner, after making a confession, was held on charges of possession of a controlled substance. Subsequently, the other passenger was released as was the car's operator who was issued summonses

for driving without a license and for an improper muffler.

At his suppression hearing in the state court, petitioner argued that the seizure of the marijuana from the car, his arrest, the search of his pockets, and the subsequent confession were all fruits of the allegedly unlawful inventory search of the car. The trial judge ruled the evidence admissible, however, and the petitioner pleaded guilty rather than stand trial. At issue here is whether petitioner was provided Stone v. Powell's, 96 SCt 3037 (1976), opportunity for full and fair litigation of his unlawful search and seizure claim in the state courts. I find that he was and is therefore precluded from relitigating this claim in a federal habeas corpus proceeding.

Concededly, the validity of petitioner's arrest and the subsequent search and confession hinges upon the first step in the chain of events on the night of May 16, 1974 -- the alleged impoundment and inventory search of the car. Petitioner contends, however, that "the trial court's conclusory assertion -- without analysis of the inconsistencies in the evidence -- that an impoundment had taken place is not fairly supported by the record." Petitioner's Memorandum of Law at 26. Specifically, petitioner points to the court's ruling



governing cross-examination at the suppression hearing as prohibiting development of certain alleged inconsistencies in the arresting officer's testimony concerning whether there was in fact an intention to impound the car and, if so, whether the proper regulations were followed.

Arresting Officer Haacke testified at the suppression hearing that he had already decided to impound the vehicle and inventory its contents when he came upon the manila envelope which led to the arrest. The court credited his testimony and refused to suppress either the physical evidence or the confession. The crux of the challenge to this finding appears on page 19 of Petitioner's Memorandum of Law:

On cross-examination Officer Haacke testified that although he did not have a copy of the rules and regulations of the Hempstead Police Department with him in court, he thought they contained a section regarding motor vehicle impoundment. The following exchange then occurred:

[DEFENSE COUNSEL]: And is it your contention, Officer, that you followed the rules and regulations of the Hempstead Police Department in connection with the impounding of that vehicle?

[PROSECUTOR]: Objection, Your Honor. That would be irrelevant.

THE COURT: Sustained.



[DEFENSE COUNSEL]: Your Honor, I submit that this is very relevant. He's trying to hang this search on an inventory search on an impoundment when in fact no impoundment took place.

[PROSECUTOR]: Objection to defense counsel's characterization of the witness' testimony.

THE COURT: Sustained.

Given these rulings by the trial court, it is understandable that the defense asked no further questions about the contents of the Hempstead Police Department rule on impoundments or the extent to which the rule had been followed in this case. (emphasis added).

Contrary to petitioner's argument, I do not find it understandable why this line of questioning was not pursued. The patrolman's belief as to whether he followed the regulations was irrelevant, and the second objection was directed at the characterization of the testimony and not at the line of questioning itself. Petitioner's trial counsel was in no way precluded from testing Officer Haacke's credibility generally; nor was he precluded from pursuing a line of questioning dealing with when and why the officer decided to impound the vehicle.

With the benefit of hindsight, petitioner points

to South Dakota v. Opperman, 96 SCt 3092 (1976), in an attempt to characterize testimony concerning adherence to the regulations governing impoundment as crucial to determining the validity of an inventory search. Nonetheless, even if the cross-examination were improperly curtailed, petitioner was in no way precluded from calling his own witnesses or, for that matter, introducing into evidence the regulations themselves. Indeed, petitioner's trial counsel argued in his summation that proper procedures were not followed and that the testimony concerning impoundment was a "cover" for an illegal search. Neither a span of two years, nor the Supreme Court's Opperman decision transforms a failure to successfully litigate a claim after a full and fair opportunity is presented into a denial of an opportunity for full and fair litigation of that claim.

Nor is there anything in the record to indicate that the trial judge improperly credited the testimony of the patrolmen concerning their original intention to impound the vehicle. The trial judge could have reasonably concluded that the patrolmen, faced with a situation where a car was parked in a no-parking zone with no licensed driver to remove it, decided to impound the car, inventory its contents,



and drive it themselves to the station house a few blocks away rather than call for a tow. Moreover, the patrolmen's failure to log their intention to impound, which petitioner argues is fatal to a finding of such intention, is clearly understandable in light of the subsequent events.

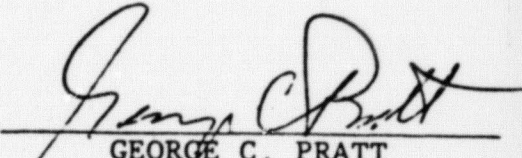
In sum, the trial court could properly find "from all the testimony not refuted and [inferences] reasonably to be drawn from same premised upon credibility that in fact the actions of Patrolman Haacke constituted an inventory search which revealed during that process the contraband which then interrupted the impoundment proceeding resulting in the arrest of the defendants \* \* \*." Minutes of Suppression Hearing at 101. Cf. Wilson v. Parrat, 540 F2d 415 (CA8 1976); United States ex rel. Terry v. Henderson, 462 F2d 1125 (CA2 1972) (sufficiency of the evidence not a matter for federal habeas review).

Since there is no constitutional infirmity attached to an inventory search per se, South Dakota v. Opperman, supra; Cardwell v. Lewis, 417 US 583 (1974); Cady v. Dombrowski, 413 US 433 (1973), and since petitioner received an opportunity for full and fair litigation of the validity of this particular search, Stone v. Powell, supra, the petition

for issuance of a writ of habeas corpus is dismissed.

SO ORDERED.

Dated: Westbury, New York  
February 9, 1977

  
GEORGE C. PRATT  
U. S. DISTRICT JUDGE



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m.c. Dwyer  
6/3/75*

COUNTY COURT : NASSAU COUNTY

PART XII

*Indy # 41067*

-----x  
THE PEOPLE OF THE STATE OF NEW YORK:

-against- : Ind. No. 40064

EDMUND B. GETTENS, :

Defendant. :

-----x

Mineola, New York  
September 11, 1974

B e f o r e:

HON. ALFRED F. SAMENGA,  
County Court Judge

Appearances:

HARVEY D. MELNIKER, ESQ.  
Assistant District Attorney  
for the People

SAUL ROTH, ESQ.  
Attorney for defendant

- - -

MINUTES OF SUPPRESSION HEARING

- - -

GARY TOVSKY,  
Official Court Reporter

For the People - Haacke - Direct

-2-

THE CLERK: The People versus Edmund B. Gettens.

Indictment 40064.

People ready?

MR. MELNIKER: People ready for hearing.

THE CLERK: Defendant ready?

MR. ROTH: Ready for hearing.

THE CLERK: Your Honor, I understand this is a hearing on motion of the defendant to suppress both physical evidence and a statement made by the defendant.

Is that correct, counsel?

MR. ROTH: Yes.

THE CLERK: Thank you, sir.

Would the People call their first witness.

MR. MELNIKER: The People call Patrolman Warren Haacke.

P O L I C E        O F F I C E R        W A R R E N        H A A C K E

Shield No. 128, Hempstead Police Department, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

THE CLERK: State your name, spell your last name and your shield number for the court reporter, please.

THE WITNESS: I'm Police Officer Warren Haacke, H-A-A-C-K-E. My Shield No. is 128, Hempstead Police.

THE COURT: Your Shield No.?

THE WITNESS: 128.



For the People - Haacke - Direct

-3-

THE COURT: H-A-A-C-K-E?

THE WITNESS: That's correct.

DIRECT EXAMINATION

BY MR. MELNIKER:

Q Patrolman, I direct your attention to May 16, 1974, in the vicinity of Front Street and Main Street in Hempstead, Nassau County, New York, and I ask you at that time did you come in contact with a person now known to you as Edmund Gettens?

A Yes, sir.

Q And I ask you if you see that person in the courtroom and if you do will you identify him?

A Yes. He's sitting right there.

MR. MELNIKER: May the record reflect identification --

THE COURT: There are two men at that table.

THE WITNESS: The man with the pink tie and the black jacket on.

THE COURT: The black man?

THE WITNESS: That's correct.

MR. MELNIKER: May the record reflect identification, Your Honor?

MR. ROTH: No objection.

THE COURT: So ordered.

Q And what tour of duty were you on that day?

For the People - Haacke - Direct

-4-

A On a midnight shift.

Q And were you in a marked patrol car?

A Yes.

Q And were you alone or with a brother officer?

A I was with a brother officer.

Q And where did you observe for the first time Mr. Gettens?

A We observed a '67 Chevy which was northbound on Franklin Street making a right turn onto Front. We were southbound on Franklin making a left turn onto Front. We followed that car on Front Street and we both made a left turn which -- northbound onto Main Street.

Q You say you followed that car. What if anything attracted your attention to that vehicle?

A A very loud exhaust. Muffler.

Q And when you say "very loud," could you be a little more descriptive?

A It sounded like it was either pipes or part of the muffler assembly was missing.

Q And did there come a time when you pulled that car over?

A Yes.

Q And approximately where was that and approximately what time?

A It was approximately at one twenty in the morning, a.m.



For the People - Haacke - Direct -5-  
and that was just north of the intersection of Main and  
Jackson.

Q And by what means did you pull that vehicle to the  
side?

A Red lights.

Q And did the vehicle pull over?

A Yes.

Q And by the way, who was driving your vehicle?

A I was driving.

Q And did there come a time when you approached the  
vehicle that Mr. Gettens was in?

A Yes.

Q And what did you observe with respect to the persons  
in that vehicle?

A I approached the vehicle and asked the operator for  
his license and registration.

Q When you say "operator," do you know -- pardon me.  
Continue.

A The operator --

Q Was Mr. Gettens the operator?

A No.

Q Where was Mr. Gettens seated?

A Mr. Gettens was in the passenger seat. Front passenger  
seat.

For the People - Haacke - Direct

-6-

MR. ROTH: I'm sorry. I didn't hear that.

THE WITNESS: Front passenger seat.

Q And there was a person driving. And was there any other occupant?

A Yes. There was an occupant in the rear seat.

Q Do you know now the name of that person in the rear seat?

A Yes.

Q What is it?

A Idalio Galerez.

Q And do you now know the name of the person driving that vehicle?

A Yes.

Q And what was his name?

A John Cruz.

Q And there came a time when you approached the driver of that vehicle?

A Yes.

Q And what if anything did you say to him and what did he respond?

A I asked him to see his license and registration to the vehicle. He presented me the registration and he presented me with a learner's permit. At -- do you want me to continue?

Q Yes.



For the People - Haacke - Direct

-7-

A At this time I explained to him that it's not legal for him to drive with just a permit. And I asked if anybody else in that vehicle had a valid New York State Operator's License.

Q By the way, where was -- what was the name of the Patrolman with you at this time?

A Patrolman Walters.

Q And where was he at this time?

A He had walked up to my side.

Q And you asked the occupants of that vehicle if anyone else had a New York State -- valid New York State Operator's License?

A That's correct.

Q And did you receive a response?

A Yes.

Q And who responded and what did that person say?

A Mr. Gettens responded. He said that he did. My brother officer asked him did he have it with him. He responded no, he didn't. And then Officer Walters asked him if he had a New York State Driver's License, it was very easy for us to check on the radio to see if it was valid or not, and he responded that he didn't have a driver's license.

Q And then what did you do?

A At this point I asked all the occupants to exit the

For the People - Haacke - Direct  
vehicle.

-8-

Q What was your purpose in that?

A Well, ---

MR. ROTH: Objection.

THE COURT: Sustained.

Q What did you do?

A We had everybody exit the vehicle. Officer Cruz -- excuse me. John Cruz, the operator, he came out on my side. Gettens and Galerez came out of the vehicle on the other side. Officer Walters walked around the back of the vehicle.

Q At that time had you started to perform any official function of the Hempstead Police Department with respect to automobiles?

A Yes.

Q What was that?

A At this point without an operator, a legal operator with the vehicle, we usually impound that vehicle.

MR. ROTH: Objection, Your Honor.

Q Not what you usually do. What did you begin to do then, if anything?

A Would you repeat the question?

Q Don't tell us what you usually do. Tell us what you began to do at that time?

A The vehicle was going to be impounded and I was going



For the People - Haacke - Direct  
to check the vehicle in an inventory search.

-9-

Q Now, would you tell us the condition of the roadway, specifically the parking or no parking status of the roadway where this vehicle had come to rest?

A The vehicle was parked on Main Street and there is no parking on Main Street, one a.m. to six a.m.

Q And was a sign posted to that effect?

A Yes.

Q So that after you instructed the occupants to exit the vehicle in preparation for your inventory search, in preparation for your impounding the vehicle, what did you do or what did you observe?

A I looked on the floorboard as Cruz exited the car and I saw a brown manila folder packet.

Q Now, do you have that brown manila folder with you today?

A Yes.

Q Will you produce it?

A It would be this one here.

MR. MELNIKER: May I have that entire sealed transparent packet marked People's 1 for identification?

THE COURT: People's 1 for identification.

(Said item was thereupon marked as People's Exhibit No. 1 for identification)

Q Now, I direct your attention to People's 1 for

For the People - Haacke - Direct -10-  
identification, which is a sealed packet. And looking at it  
from the side where we view what appears to be a brown sub-  
stance, there seems to be a small manila envelope. Is that  
the manila envelope that you were referring to?

A Yes.

Q And, now, where did you find that envelope.

A It was on the floorboards of the car, not under the front  
seat but just on the edge near the front seat.

Q Now, at this time where was defendant Gettens?

A Defendant Gettens had exited on the sidewalk and he  
was standing on the right -- near the right rear bumper.

Q And was Police Officer Walters at that side at that  
time?

A Yes, he was with Mr. Gettens.

Q Would you describe this area as a low crime area or  
a high crime area.

MR. ROTH: Objection.

THE COURT: Sustained.

Q Now, what did you do when you observed this envelope?

A I picked it up and looked inside.

Q And what did you observe?

A A brown greenish substance. I thought it was marijuana.

Q And then what did you do?

A I said -- I called to Officer Walters. I said, "Pete,



For the People - Haacke - Direct

-11-

I think we have some grass. Everybody is going to be arrested."

Q And did you then place them under arrest?

A Yes.

Q And did there come a time when you made a further search of that vehicle?

A Yes.

Q And what did you discover, if anything?

A Inside an overnight bag, a brown overnight bag, I found this large --

Q Where was that bag located?

A That was located -- there is a console. It was bucket seats in the front. Between the console and the seat, the passenger's seat.

Q And could you further describe that -- that a canvass bag?

A It was a vinyl type bag.

Q Go ahead?

A Vinyl soft side zipper, maybe one foot by one foot.

Q And what did you find inside, if anything?

A Well, I opened it up and I found this large bag of what I thought to be marijuana. Everything that I found?

Q In that particular bag.

A There was a set of scales. Paper scales. There was about forty more of these small manila envelopes and there

For the People - Haacke - Direct  
was what is commonly known as a hash pipe.

-12-

THE COURT: What is that?

THE WITNESS: A hash pipe.

Q The envelope that you have just referred to, is that the plastic envelope that the greenish brown material as we look at People's 1 is enclosed in?

A Would you --

Q This big envelope inside?

A That's correct.

Q That is what you are referring to now?

A It was a clear cellophane envelope.

Q Did there come a time when you examined any other bag in that vehicle?

A Yes. There was a grocery bag on the floor. I looked inside there. There was a couple of bottles of soda and that was about it. There was nothing else in it.

Q Did there come a time when you observed Partolman Walters patting down defendant Gettens?

A Yes.

Q And what did you observe?

A Officer Walters -- I had patted down the operator, Cruz, in the rear of the police vehicle. I walked forward. I was going to pat down Galerez and Officer Walters was checking the defendant, Mr. Gettens, and he found another



For the People - Haacke - Direct -13-  
manila envelope with four hand rolled cigarettes in his

right rear pocket.

Q At this time did you give the preparations for transporting Mr. Gettens and the other two persons to the Hempstead Police Department?

A Yes.

Q And did there come a time when you called for assistance?

A Yes.

Q And did certain vehicles respond?

A Yes.

Q And did there come a time when Mr. Gettens was placed in a vehicle?

A Yes.

Q And in whose police car was that?

A In my police car.

Q And did there come a time when he was transported to Hempstead Police Headquarters?

A Yes.

Q Who was in the vehicle at that time?

A Myself and Officer Walters.

Q And the defendant?

A Yes.

Q And where was he located?

A He was in the rear seat.

For the People - Haacke - Direct

-14-

Q And how far from the scene of this incident was Hempstead Police Headquarters?

A It's directly around the corner.

Q And where was Mr. Gettens taken?

A He was brought inside and then he was brought downstairs to our complaint room where we process our arrests.

Q So that he walked through a desk area and was immediately brought to a complaint room?

A Yes, he was.

Q And he was in handcuffs at this time?

A Yes.

Q And when you were in the complaint room where was Mr. Gettens, and what did you do with him?

A I believe he had his left arm handcuffed to a hard wood bench. We brought the other two suspects downstairs. We had them separated. All three were separated in our complaint room. Police Officer Walters came down. He was behind me and he gave them their rights at that time.

MR. ROTH: Objection, Your Honor.

THE COURT: Well, I will sustain as to the form.

Rephrase.

Q Well, did you hear Patrolman Walters advise the defendants this defendant and the other two suspects that we have discussed did you hear him advise them of anything?



A Yes.

Q And what did you hear him advise them?

A Of their constitutional rights.

Q Do you recall --

MR. ROTH: Objection, Your Honor.

Q Do you recall --

THE COURT: If you can tell us what you heard, that might be better than to characterize it as constitutional rights because that is a question that I'll have to pass upon.

THE WITNESS: Oh, he informed them that they had the right to remain silent; they had a right to a lawyer; if they could not afford a lawyer that a lawyer would be provided by them -- to them by the Court; they had a -- if they wanted to waive their rights and be questioned they could stop in their questioning and ask to have a lawyer present. And he went and made sure that everybody understood their rights.

Q Do you recall if he --

MR. ROTH: Objection to that.

THE COURT: All right. I'll sustain that part of it as to what the understanding was of the police officer who advised the defendants of their rights.

Q Do you recall if he advised them that --

For the People - Haacke - Direct

-16-

MR. ROTH: Objection to leading the witness at this critical stage, Your Honor.

THE COURT: Yes.

Q Well, officer, what you testified to is not verbatim with --

MR. ROTH: Objection, Your Honor.

THE COURT: Yes. Rephrase.

Q Are you sure that you have testified in court today -- just let me finish the question.

MR. ROTH: By all means.

Q -- with respect to all the rights that you heard Patrolman Walters advise the defendant?

A Would you repeat the question, please?

Q Well, what you are testifying -- was your full attention directed to Patrolman Walters at that time when he was advising the defendant and the other suspects?

A Well, we had three suspects that were split up in the room. I don't know if my full attention was given to Officer Walters.

Q So is it possible that you may not remember today --

MR. ROTH: Objection, Your Honor.

THE COURT: Yes. I'll sustain it as leading.

I would think that the other witness for that purpose -- and you can take his testimony subject to connection -- is



For the People - Haacke - Direct

-17-

the other witness who allegedly made the representations.

MR. MELNIKER: Thank you.

Q Did there come a time when Detective Howell from the Nassau Coun Police Department, Third Squad, appeared with respect to this investigation?

A Yes.

Q Between -- from the time that you first came in contact with the defendant until Detective Howell responded was the defendant ever not under your supervision?

A No.

Q With respect to the items, the cigarettes that you have described that Patrolman Walters obtained from the defendant -- are they in this plastic bag?

A Yes.

Q Do you see them in there?

A Well, they're a little hard to see but they are in there. They're behind this -- the other marijuana but they're right up in here.

Q Now, with respect to People's 1 for identification, the items that are contained therein, when you took possession of them at the scene what did you do with them?

A I -- the first packet I found I placed in my rear pocket.

Q That would be the small manila envelope on the floor

in the front seat?

A Yes. The second one or the large envelope, cellophane envelope I kept -- once I found it I kept with me in my hand. When I got downstairs Officer Walters gave me what he had found.

Q And when Detective Howell came did you display these items to Detective Howell?

A Yes.

Q They were still in your possession?

A Yes.

Q And then what did you do with these items?

A There is a property envelope and they're sealed in there and it's signed by the desk lieutenant and then I took them to SIB to be analyzed, Scientific Investigation Bureau.

Q And where did you obtain these items today?

A At the property bureau at Police Headquarters.

MR. MELNIKER: Your Honor, at this time I would offer People's 1 for identification into evidence.

THE COURT: Show it to counsel for the defendant.

MR. ROTH: I will reserve my objection as to that, it being the purpose of this hearing, Your Honor.

THE COURT: All right.

(People's Exhibit No. 1 for identification was thereupon



For the People - Haacke - Direct  
marked as People's Exhibit No. 1 in evidence)

-19-

THE COURT: For the purposes of the hearing then, I assume counsel can acknowledge that these were the items that were taken, since it was alleged that they were. Whether or not the taking was proper and legal remains for the Court to decide.

MR. ROTH: Yes. That's what I had in mind.

THE COURT: In that case People's 1 for identification is People's 1 in evidence.

MR. ROTH: For the purposes of this hearing?

THE COURT: Yes.

MR. ROTH: Yes. Thank you.

MR. MELNIKER: Thank you, Your Honor.

Q When you saw that small manila envelope on the front floor by the driver's side, where were you when you observed that?

A I had opened the door and Cruz had gotten out. He was walking toward the back of the car. I told him to wait in the rear of the car. And I just looked inside.

Q And did you have a flashlight at the time?

A Yes, I did.

Q And were you using the flashlight at the time --

A No.

Q -- to observe that envelope?

For the People - Haacke - Direct/Cross

-20-

A No.

Q What were you using, if anything?

A There were interior lights in the car and Main Street is fairly well lit. It has the mercury vapor lights and it's almost like daytime at night.

Q Do you know how the -- withdrawn.

No further questions, Your Honor.

CROSS EXAMINATION

BY MR. ROTH:

Q Officer Haacke -- is that it?--

A Haacke.

Q -- Haacke. Officer Haacke, you've testified that when you saw the vehicle in which the defendant was riding your attention was attracted by the fact that the muffler was rather loud; is that correct?

A Yes, sir.

Q The exhaust. Now, how long have you been a police officer, sir?

A Fifteen months.

Q I see. And during that fifteen months, sir, have you issued any traffic tickets to people for excessively loud exhaust systems?

MR. MELNIKER: Objection. Irrelevant.

THE COURT: Overruled. Cross examination.



For the People - Haacke - Cross

-21-

Q Have you?

A Yes, sir.

Q I see. Have you ever arrested anybody for excessively loud mufflers?

MR. MELNIKER: Objection, Your Honor. It's irrelevant.

THE COURT: I'll sustain that.

Q Now, incidentally, when this whole affair crystalized and you had these people in custody did you issue a summons for improper muffler?

A Yes, sir.

Q I see. To Mr. Cruz?

A Yes, sir.

Q And when you spoke to Cruz I think you testified that he had a learner's permit; is that correct?

A Yes, sir.

Q Was that a valid learner's permit?

A Yes, sir.

Q And I think you testified that if a person has a learner's permit he could legally operate a vehicle if there is another person in the vehicle who has a regular permit; is that correct, a regular license?

A If he's over eighteen.

Q Over eighteen; right?

A Yes, sir.

Q Now, when you spoke to Mr. Cruz he showed you a registration; is that correct?

A Yes, sir.

Q As a matter of fact, he also showed you an insurance certificate; didn't he, which he obtained from the glove compartment?

A I'm really not sure.

Q Who was the car registered to?

A John Cruz.

Q Was there any question in your mind as to his identity?

A No, sir.

Q And did you issue him a ticket for unlicensed operator?

A Yes, sir.

Q And the particular sub-division of the V and T which authorizes you to issue a ticket for a person who has a permit but without an adult with a regular license, have you given that ticket to other people during the eighteen months that you are a police officer?

MR. MELNIKER: Objection.

THE COURT: Sustained.

Q That's not a misdemeanor; is it, sir?

MR. MELNIKER: Objection.

THE COURT: Well, if the officer knows we'll let him answer it.



For the People - Haacke - Cross

-23-

MR. ROTH: I would ask the Court to take judicial notice that this is a violation of the Vehicle and Traffic Law, sir.

THE COURT: It has been since 1971; yes.

Q Officer, when you asked the people to step out of that vehicle you say that Cruz stepped out on your side and the defendant and the other male stepped out on the other side and your brother officer quickly ran around to the other side; is that correct?

A Yes, sir.

Q All right. And at that point, sir, were any of these people free to leave?

A I don't --

MR. MELNIKER: Objection, Your Honor. That is not material whatever --

THE COURT: No. I'll ask him to rephrase it. I'll sustain the objection on that basis.

Q The three individuals who you were in contact with when you asked them to step out of that automobile, were they at liberty to leave?

MR. MELNIKER: Objection, Your Honor. It calls for a conclusion and it's not particularly pertinent to this particular hearing.

THE COURT: Well, it may be pertinent but I will sustain

the objection as to form.

Q Well, sir, if Mr. Gettens, the defendant, started walking away at that point would you have stopped him?

MR. MELNIKER: Objection, Your Honor. This is speculative.

THE COURT: No, it's overruled. He can answer that.

A Yes, sir.

Q So that he was not at liberty to leave; was he?

MR. MELNIKER: Objection.

THE COURT: Well, that is argumentative. Sustained.

Q And in fact you had these three individuals in your custody; is that correct, you and Patrolman Walters?

MR. MELNIKER: Your Honor, at what point are we talking about?

THE COURT: Sustained.

MR. ROTH: When he asked them to step out of the car.

THE COURT: You may answer that.

A Could I -- would you repeat the question, please?

THE COURT: Yes.

(Said question was thereupon read back by the reporter)

A When we asked them to step out of the car were they in custody?

Q Yes.

A No.

Q They were not?



A No.

Q What was your purpose in asking them to step out of the car, officer?

A Being that Mr. Cruz didn't have a valid operator's license -- he was parked in a no parking zone. The car was going to be impounded.

Q You told him to stop; didn't you? You ordered him to stop?

A Ordered who to stop, sir?

Q Mr. Cruz, the operator of that vehicle.

MR. MELNIKER: Objection, Your Honor. It's immaterial whether he did or he did not.

THE COURT: Yes. I'll sustain that.

Q Did he voluntarily park his car there?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

Q Does the Hempstead Police Department have an impound station?

A I don't understand your question, sir?

Q Does the Hempstead Police Department have an impound garage?

A We have people who do impounds for us, private towing firms.

Q I see. And where you have to impound a car you call the

For the People - Haacke - Cross

-26-

particular garage and they come and tow the car away; isn't that a fact?

A That's correct.

Q And when they tow the car away it's towed away locked; isn't it?

A No, sir.

Q Now, let me understand something, officer. When you asked Mr. Cruz to get out of the car was he being arrested for not having a proper license?

A No, sir.

MR. MELNIKER: Asked and answered, Your Honor.

THE COURT: Sustained.

Q When you asked the defendant to get out of the car were you arresting him for anything?

A No.

Q And when you asked the third occupant of the car to get out were you arresting him for anything?

A No.

Q And in impounding this car were you impounding this car for evidence?

A No.

Q Was this -- this car was not going to be used in any kind of a prosecution; was it?

MR. MELNIKER: Objection, Your Honor.



For the People - Haacke - Cross

-27-

THE COURT: He's already answered. Sustained.

Q Did you ask anybody's permission to search that car?

A No.

Q And do I properly understand your testimony that you could not have given Mr. Cruz a ticket and told him to drive home?

MR. MELNIKER: Objection, Your Honor. What he could or could not have done. He's testified --

THE COURT: Sustained.

Q Now, this envelope that you picked up you picked up on the floorboards of the car, was that on the driver's side or on the passenger's side?

A On the driver's side.

Q And as soon as you picked -- incidentally, it was not sealed in any way or --

A No.

Q You didn't break any seal or staple or anything?

A No.

Q It was open?

A Yes.

Q And you looked in and you saw a substance which you believed to be marijuana?

A Yes.

Q At that point, sir, did you ask the occupants of the

For the People - Haacke - Cross  
vehicle who it belonged to?

-28-

A No.

Q Did you give any Miranda warnings yourself at that point?

A No.

Q Now, sir, you say that later on at the stationhouse you were present when Patrolman Walters gave the so called Miranda warnings to the defendant; is that correct?

A Yes.

Q Now, you said that you had the three individuals separated; is that correct?

A Yes.

Q When you say "separated," were they in three separate rooms?

A No, sir.

Q They were separated in the same room?

A Yes, sir.

Q How large is that room compared to this courtroom?

A The room is kind of odd shaped. I'd say it might be as long but not quite as wide.

Q I see. Now, would you -- would you agree with me that this courtroom was perhaps thirty-five feet long?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.



MR. ROTH: Do you have a chart?

THE COURT: I have some indication that from where I am seated to the rear of the courtroom is a distance of forty-eight feet.

Q Would you say that room was about forty-eight feet long?

A Yes, sir.

Q And not quite as wide as this courtroom?

A No, sir.

MR. ROTH: Might I inquire, Your Honor, does Your Honor have any indication of the width of this courtroom?

THE COURT: From the witness stand to the east wall of the courtroom is thirteen feet and eight feet to the westerly wall.

Q So it's twenty, twenty-one feet, would you say, officer, this courtroom might be?

A My addition would give me twenty-one.

Q Yes. And how narrower is the room that you are talking about?

A In -- maybe two or three feet.

Q I see. Now, where were each of the three individuals placed in that room?

A The room is set up quite differently than this. But I guess if we use this wall as a guide --

THE COURT: The westerly wall.

THE WITNESS: -- I'd put-- Cruz was about where this chair is.

THE COURT: Meaning the far end of the length of the room?

THE WITNESS: The defendant was somewhere in the vicinity of the window.

THE COURT: Well, there are three windows.

THE WITNESS: The middle window.

THE COURT: So that would put him just approximately at about the center of the room?

Q Perhaps fifteen or twenty feet away?

A It would look more like ten to twelve foot away.

Q Ten to twelve foot away. And the third individual?

A I would say by the third window.

Q Thirty-five --

A Thirty, thirty-five feet away from the first man.

Q So that the three individuals were at least somewhere between ten to fifteen feet separated; is that correct?

A Yes, sir.

Q All right. Now, when you heard Patrolman -- Walters, is it?

A Walters.

Q -- give the so called Miranda warnings to this defendant, referring to my client, Edmund Gettens, where was Edmund



For the People - Haacke - Cross  
Gettens; was he at one of the ends or in the middle?

-31-

A In the middle, sir.

Q I see. And with one defendant to his right and with one defendant to his left some ten to fifteen feet away; is that correct?

A Yes.

Q And where was Patrolman Walters standing when he advised him of his so called rights?

A I would say somewhere right in this area. Maybe a few feet in front of you.

Q So perhaps some eight to ten feet away from Mr. Gettens; is that correct?

A I guess it might have been eight, maybe six foot.

Q And where were you standing, sir?

A I was sitting at a desk which would have been right maybe --

Q At the opposite side of the room?

A Right.

Q So you might have been somewhere fifteen, twenty feet away; right?

A From who, sir?

Q From Mr. Gettens?

A Yes.

Q And were you closer to Mr. Gettens than to any of the

For the People - Haacke - Cross  
other two individuals?

-32-

A Yes.

Q And were you watching when Patrolman Walters gave these warnings to Mr. Gettens?

A Was I watching Mr. Gettens specifically?

Q Yes.

A I was watching all three prisoners, sir.

Q I see. And when Mr. Walters -- rather Patrolman Walters was giving these warnings was he addressing Mr. Gettens or all three of them at the same time?

A He was directing the warning to all three.

Q I see. Now, did you undertake to advise Mr. Gettens of his rights at any time?

A No, sir.

Q Only Patrolman Walters?

A Yes, sir.

MR. MELNIKER: Your Honor, are we talking about this specific time; is that correct?

THE COURT: I would assume since that is the area --

MR. ROTH: That evening.

THE COURT: -- of examination.

MR. MELNIKER: Now defense counsel asked him that evening.

MR. ROTH: I asked him was there any time he had given him the rights other than Patrolman Walters.



Q Did you?

A No.

Q Now, subsequently a detective arrived at the Hempstead Police Station; is that correct?

A Yes.

Q It was a County detective?

A Yes.

Q Specifically do you recollect his name?

A Detective Howell.

Q Howell?

A H-O-W-E-L-L.

Q Howell. And were you present when Detective Howell spoke to the defendant?

A To the defendant?

Q Yes.

A Yes.

Q I see. And what if anything did Howell say to the defendant?

A Well, when he took a statement from Mr. Gettens I believe he informed him of his Miranda warning once again.

Q Well, what did he tell him?

A He explained to him that he had the right to remain silent; that anything he said could be used against him in a court of law; he had the right to an attorney; that if he

For the People - Haacke - Cross

-34-

could not afford an attorney that one would be provided to him from the courts; he had the right to waive his rights; and that he could make a statement and that if at any time during the statement he wanted a lawyer present he could stop and request a lawyer.

Q Now, before the detective arrived, however, both you and detective -- both you and Patrolman Walters questioned Mr. Gettens; isn't that a fact?

MR. MELNIKER: Objection. The form. At least the form, Your Honor.

THE COURT: No, it's cross examination. Let's see what the answer is.

A Yes. I asked Mr. Gettens questions.

Q Relating to the marijuana?

A No, sir.

Q Pardon?

A No, sir.

Q Relating to the case?

A Yes.

Q What did you ask him and what did he tell you?

A I think I -- I asked him one time where he had picked it up.

Q Did he answer you?

A I got no reply.



Q Did you ask him if the stuff that you found was his?

A No.

Q Pardon?

A No, sir.

Q Well, at that point, sir, before the detective arrived were all three of these individuals under arrest?

A Yes, sir.

Q For possession of marijuana?

A Yes, sir.

Q And at no point prior to the arrival of the detective did you ask anyone of the three who the marijuana belonged to?

MR. MELNIKER: Objection. Asked and answered.

THE COURT: Sustained.

Q Prior to the time that the detective arrived did you show any of the marijuana that you had retrieved to Mr. Gettens?

A Like I -- as I said, the room is small. I'm sure that he might have been able to see it. It was sitting on a desk that I was --

Q Well, did either you or Patrolman Walters say "this is the stuff we found on you?"

A Not that I recall, sir.

Q And you never asked Mr. Gettens whether any of that stuff that you found belonged to him; is that correct?

MR. MELNIKER: Objection. Asked and answered, Your Honor.

THE COURT: All right. Let him answer it once more.

A Could you repeat the question, please?

Q At no time prior to the arrival of the detective did either you or Patrolman Walters in your presence ask Gettens whether any of the evidence which you found belonged to him?

A I don't think so, sir.

Q Prior to the arrival of the detective did he make any admissions to you with respect to this case?

A No, sir.

Q Or to Patrolman Walters in your presence?

A No, sir.

MR. ROTH: I have no further questions.

MR. MELNIKER: Just a few short ones, Your Honor.

REDIRECT EXAMINATION

BY MR. MELNIKER:

Q You said, you referred to the learner's permit and I believe in response to Mr. Roth, did I hear you correctly to say that if someone had a proper New York State valid license that Mr. Cruz could have been driving at that hour?

A I believe the law reads that if --

MR. ROTH: I'm going to object to that, Your Honor. The law speaks for itself. I'll ask the Court to take



Law with respect to learners' permit.

MR. MELNIKER: Thank you, Your Honor.

Q Officer, are you responsible for the contents of a vehicle that is impounded?

A Yes.

Q And if a vehicle was brought to Hempstead Police Station and certain items that were in the vehicle at the time you stopped it were not in the vehicle that -- when it arrived at the Police Station would you be personally responsible for those articles?

MR. ROTH: Objection, Your Honor.

THE COURT: Yes. I'll sustain it as to form.

Q Officer, who is responsible for the items in a vehicle if that vehicle is impounded?

MR. ROTH: Objection.

THE COURT: No. I'll allow that.

A If I impound the vehicle I'm responsible.

Q And with respect to that responsibility you testified that you undertook a limited inventory with respect to that impoundment?

A Yes.

MR. MELNIKER: No further questions, Your Honor.

RE CROSS EXAMINATION

BY MR. ROTH:

Q You impounded that vehicle, officer?

A I am the impounding officer.

Q Did you keep the vehicle?

A The car was -- I believe was released.

Q To who?

A I believe -- I don't have that information. I was not responsible for the car after it was brought to police headquarters.

Q And in whose custody was that car between the time that you impounded it and it arrived at police headquarters?

A Who?

Q In whose custody was that car between the time that you impounded it and the time it arrived at police headquarters?

A I am not sure I understand the question.

Q What don't you understand about the question?

MR. MELNIKER: Objection, Your Honor. If he understood what he didn't understand --

THE COURT: Sustained.

Q I'll say it very slow, officer. You impounded the vehicle; is that correct?

A The vehicle was in the process of being impounded.

Q By who?

A By myself.

Q I see. And then you kept it in your personal custody



from that point on; is that correct?

A No, sir.

Q As a matter of fact, officer, you transported the defendant over to the police station and you left that car there; didn't you?

A No, sir.

Q Were you there when the tow truck pulled it away?

A The car was driven to police headquarters by Officer Wells.

Q I see. So it was no longer in your custody; is that correct? It was in Patrolman Wells' custody and it wasn't placed in an impound, it was taken to headquarters; isn't that a fact?

A Yes, sir.

Q And it remained at headquarters until it was released to either Mr. Cruz or his authorized representative; isn't that a fact?

MR. MELNIKER: Your Honor, I would object and ask that the previous answer be stricken as not being relevant to the particular issues in this hearing.

THE COURT: Sustained.

Q Where was that car impounded, officer?

MR. MELNIKER: Objection. Asked and answered, Your Honor.

THE ROTH: I think this is very vital, Your Honor.

THE COURT: All right.

MR. ROTH: He's trying to --

THE COURT: All right. I'll let him answer the question if he can do so.

A Where was the car impounded?

Q Yes.

A The car was in the process of being impounded at Main and Jackson.

Q I see. By who?

A By myself.

Q Does the Hempstead Police Department have a book which is referred to as the rules and regulations of the Hempstead Police Department?

A Yes, we do, sir.

Q Do you have a copy of it?

A Not with me, sir.

Q I see. Do any of your brother officers have a copy of it?

A I'm not sure, sir.

Q Do you know, officer, whether there is an article in those rules and regulations with respect to the impounding of vehicles?

A I believe there is a section.

Q And is it your contention, officer, that you followed



For the People - Haacke - Recross -41-  
the rules and regulations of the Hempstead Police Department  
in connection with the impounding of that vehicle?

MR. MELNIKER: Objection, Your Honor. That would be irrelevant.

THE COURT: Sustained.

MR. ROTH: Your Honor, I submit that this is very relevant. He's trying to hang this search on an inventory search on an impoundment when in fact no impoundment took place.

MR. MELNIKER: Objection to defense counsel's characterization of the witness' testimony.

THE COURT: Sustained.

Q I see you have an envelope in your custody, officer?

A Yes, sir.

Q Now, prior to coming here and testifying today did you examine the contents of that envelope in preparation of your testimony here?

A Did I look inside the envelope?

Q Yes.

A No, sir.

Q I see. Is that what is called a file, a case file?

A No, sir.

Q I see. Do you have a case file with you?

A A case file?

Q Yes.

A I don't think so, sir.

Q Did you make any entries in your memo pad that night?

A Oh, yes, sir.

Q Do you have your memo pad with you?

A Yes, sir.

Q May I see your memo pad?

MR. MELNIKER: May we have that marked for identification,  
Your Honor?

THE COURT: You may.

Q Would you turn to the page, officer, respecting this  
particular incident.

A Can I see it, please?

(Said memo book was given to the witness)

THE COURT: Mark it People's 2 for identification.

Is it all on that one page; is there anything on the  
back of that page?

THE WITNESS: No. It's all on that one page.

(Said page was thereupon marked as People's Exhibit No. 2  
for identification)

Q Just this one page?

A Yes, sir.

Q There are no other entries relevant to this case other  
than what is on this page?



A Yes, sir.

Q Now, officer, I ask you to look at your memo pad, People's Exhibit 2 for ID, and isn't it a fact, officer, that other than a notation with respect to the arrest of this defendant, Edmund Gettens, that there are no entries respecting the other two individuals?

MR. MELNIKER: Objection, Your Honor. That would be immaterial at any rate.

THE COURT: Sustained.

MR. ROTH: Your Honor, he testified he arrested three people that night. This is an admission against his -- contrary to a prior sworn statement, Your Honor.

MR. MELNIKER: Quite the contrary Your Honor.

THE COURT: Sustained.

Q Do you have any entry in there, sir, with respect to any impoundment?

MR. MELNIKER: Objection.

THE COURT: That is overruled.

A No, sir.

Q And what time do you have for the arrest there, officer?

A At 1:20 a.m.

Q I see. Now, you've testified, sir that you did not ask any of the three individuals who the stuff belonged to; right?

A Would you repeat that?

Q You testified that you did not ask any of these three individuals who this stuff belonged to; is that right?

A I didn't ask them who it belonged to.

Q And when you opened up the envelope you saw a substance which you thought was marijuana; is that correct?

A Correct.

Q All right. You had no way of knowing for sure whether it was or it wasn't; isn't that a fact?

A That's correct.

Q I see. Now, at that time, officer, were you arresting him for the marijuana that you -- or the substance that you found in that first envelope or were you arresting him for the stuff that you found in the bag or were you arresting him for the stuff that your partner found in his pocket or all of that?

MR. MELNIKER: At which time, Your Honor?

THE COURT: All right. I think he can distinguish from the form of the question what times we're talking about.

You may answer it.

A From the first envelope.

Q On the first envelope?

A Yes.

Q Okay. Now, before coming to court here today, officer --



For the People - Haacke - Recross  
well, withdrawn.

-45-

When were you notified that you had to come to court today for a hearing on this case?

A Yesterday afternoon, sir.

Q And from the time that you were notified to come to court here until you arrived in court, sir, did you examine any documents at all to refresh your recollection as to the facts of this case?

A Yes, sir.

Q What did you examine?

A I looked at a copy of the case report. I looked at my testimony from the grand jury. I took a quick look at the 85-A.

MR. ROTH: I call for the production of those documents, Your Honor.

MR. MELNIKER: Your Honor, the first item that the --

MR. ROTH: The case report he mentioned.

MR. MELNIKER: What is that?

THE WITNESS: The case report is the 32.

MR. MELNIKER: May we have these marked for identification?

THE COURT: 3, 4, and 5 for identification.

(Said documents were thereupon marked as People's Exhibits Nos. 3, 4 and 5 for identification)

MR. MELNIKER: People's 3 was marked as the case report,

For the People - Haacke - Recross

-46-

Your Honor. Four is the 85-A and five is the grand jury minutes, Your Honor.

Your Honor, may the record disclose that I'm returning People's Exhibit 1 in evidence to the police officer with seal unbroken?

MR. ROTH: I have no objection, Your Honor.

THE COURT: All right. In that case, if there is no objection we have no problem; right?

MR. MELNIKER: Your Honor, with respect to People's Exhibit 5 for identification, I would ask that defense counsel be restricted to pages 2 --

MR. ROTH: Excuse me a second, Mr. District Attorney.

Q Officer, with respect to the grand jury minutes what portion of the grand jury minutes did you examine or did you examine the entire grand jury minutes?

A I believe that the district attorney Melniker had the pages stapled that was in reference to my testimony.

Q Just your testimony; is that correct?

A I'm not positive but I thought my name was on the top of each page.

MR. ROTH: I'd ask to see each page that his name is on top of, Mr. Melniker.

MR. MELNIKER: Your Honor, when I did give the witness the grand jury minutes --



For the People - Haacke - Recross

-47-

MR. ROTH: You are not sworn. You are not under oath,  
Mr. Melniker.

MR. MELNIKER: Your Honor, since the police officer is not sure as to which pages he looked at, since I was present and I had previously put certain paper clips on perhaps I can be of some assistance to the Court.

THE COURT: The direction of the Court is that counsel for the People and counsel for the defendant may determine between themselves, subject to any further action by the Court, those pages which relate to the testimony reviewed by the witness.

MR. MELNIKER: Your Honor, I would suggest that it would be pages 2 thru and including 8.

THE COURT: All right. Take a few minutes.

MR. MELNIKER: May the witness be shown People's Exhibit --

MR. ROTH: Mr. Melniker, please. One at a time.

THE COURT: Let him look at the testimony.

(People's Exhibit No. 5 was thereupon given to defense counsel)

MR. ROTH: All right. That's five. Next?

MR. MELNIKER: May the officer please advise us which portions of the 85-A, People's Exhibit 4 for identification, he referred to?

THE WITNESS: The back of it.

MR. MELNIKER: You point to the narrative on the back at the top?

THE WITNESS: Correct.

MR. MELNIKER: I would ask that counsel be restricted to that portion.

(People's Exhibit No. 4 for identification was thereupon given to defense counsel)

MR. MELNIKER: With respect to People's 3 for identification can the witness tell us which portions he referred to?

THE WITNESS: "Reporting members initialed detailed." It continues on to the investigating or detective remarks but the detective remarks signed by Howell I didn't -- I didn't see this one. I saw a copy from police headquarters which didn't have Howell's remarks on it.

Q Did you read Howell's remarks or did you just read the narrative?

A I read the narrative.

MR. MELNIKER: Thank you. I would ask that counsel be restricted to that portion --

MR. ROTH: We can redact whatever he didn't read.

(People's Exhibit No. 3 for identification was thereupon given to defense counsel)

Q Officer, do you recall testifying in the grand jury?

A Yes, sir.



Q And do you remember before you testified you were given the oath to tell the truth?

A Yes, sir.

Q And in fact you told the truth; didn't you?

A Yes, sir.

Q Now, officer, do you remember being asked the following questions and giving the following answers?

A Excuse me, sir?

Q I'm going to read certain questions and answers. Just a few. And then when I finish I'm going to ask you whether you recall being asked those questions and giving those answers. Do you follow me?

A Yes, sir.

Q From page 6 of the grand jury minutes.

"Q. Now, sir --" That's directed to you. "-- did you or any other officers in your presence talk to the people that were arrested concerning this marijuana?

"A. Yes, we did.

"Q. Did any of the persons that you spoke to admit to owning the marijuana?

"A. Yes. Edmund Gettens gave us a statement to the fact that he owned all the marijuana that was in the car and on his person.

"Q. Did Edmund Gettens give a written statement to

For the People - Haacke - Recross  
that effect?

-50-

"A. Yes, he did.

"Q. Who took this -- who took the statement from him?

"A. Detective Howell took the statement. I was present when he gave it."

Now, do you recall being asked those questions and giving those answers, officer?

A Yes.

Q Now, let me ask you once again, sir, prior to the time that Detective Howell arrived at Hempstead Police Headquarters did you take an oral statement from Mr. Gettens as to the possession of the marijuana?

A No, sir.

Q Did Patrolman Walters?

A Not that I know of, sir.

Q Okay. Now, officer, do you remember being asked this question and giving this answer at page 3 of the grand jury minutes:

"Q. Please tell the grand jury what happened in this case?

"A. I was working a midnight patrol in car 2, post 2, with Police Officer Walters. We observed a 1967 Chevy, white with a black top on Front Street heading eastbound make a left turn heading northbound on Main Street, followed the car



on Main Street. It had an extremely loud muffler. Pulled the car over in the vicinity of Jackson and Main Street. At this time I got out of the car, approached the driver and asked him if he had a driver's license. He told me at the time he didn't. He had a permit. I asked -- there were two other occupants in the car -- if they had a valid New York State operator's license and they said they did not. I asked everybody in the car to exit the vehicle. As they did I looked on the front floor of the car and saw a small brown package. After they got out of the car I picked it up and I looked inside and it seemed to be marijuana."

Now, do you remember being asked that question and giving that answer, sir?

A Yes.

Q Now, you didn't tell the grand jury anything about any inventory search; did you?

MR. MELNIKER: Objection.

THE COURT: Sustained.

Q And in fact you didn't tell the grand jury anything about any impoundment; did you?

MR. MELNIKER: Objection.

THE COURT: Sustained.

MR. ROTH: May the record indicate, Your Honor, I'm returning the grand jury minutes to the assistant district

For the People - Haacke -Recross  
attorney?

-52

THE COURT: Thank you.

Q Now, officer, with respect to People's 3 for identification, the form 262--

MR. MELNIKER: 32.

THE COURT: 32.

THE WITNESS: 32.

Q 32. With respect to your form 32, officer, did you type up this information?

A Yes, sir.

Q I see. Do you remember typing up the following information: "At the above time and place the defendants were stopped for VTL violation 37531. Upon investigation the driver, Juan Cruz, failed to produce an operator's license. The driver and occupants (2) were asked to step out of the motor vehicle. The complainant then noticed a small brown envelope on the driver's floorboard. Complainant opened it and found a green grass like substance (marijuana) in envelope."

Do you remember writing that on a form 32?

A Yes, sir.

Q And in fact, officer, there is no mention here of any impoundment or inventory search; is there?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.



For the People - Haacke - Recross

-53-

MR. ROTH: Let the record indicate, Your Honor, that I'm

returning the form 32 to the assistant district attorney.

THE COURT: All right.

Q Now, officer, with respect to People's Exhibit 4, the 85, did you type this up, officer?

A No, sir.

Q Pardon?

A No, sir.

Q I see. Who did type this up?

A That was Detective Howell who did the typing, sir.

Q I see. And did you give Detective Howell the information --

A Yes, sir.

Q -- based upon which he typed it up?

A Yes, sir.

Q And after he typed it up did you read it?

A Yes, sir.

Q And what you have here is the truth?

A Yes, sir.

Q And do you remember telling the detective and reading where he typed that you "observed a 1967 Chevrolet being operated northbound on Main --" I'm leaving out numbers "-- northbound on Main Street with loud mufflers. The arresting officer stopped the vehicle at the intersection of Jackson for violation of VTL 375.31. At this time the operator of the

vehicle, Juan Cruz, could not produce a license. He was asked to exit the vehicle by the arresting officer. Upon exiting the vehicle the arresting officer observed a brown paper envelope containing a brownish green substance lying on the operator's side of the vehicle on the floor. The arresting officer conducted a lawful search of the vehicle incidental to the arrest and found a quantity of a brownish green substance," et cetera.

Do you recall telling the detective that and having him type it up and you read it later?

A Yes.

Q So that as a matter of fact, officer, when you bent down and picked up that envelope and looked inside of that this was incidental to a lawful arrest; isn't that a fact?

A No. --

MR. MELNIKER: Objection.

THE COURT: All right. He's answered it.

MR. MELNIKER: I'll withdraw it.

Q Had you arrested anybody up to that point?

A Up to what point, sir?

Q At the time that you bent down and picked it up and looked inside of it?

A Had I arrested anybody prior to that?

Q Yes.



A No, sir.

Q Didn't you tell Detective Howell that this -- that you did this pursuant to or incidental to a valid arrest? Would you like to see the -- let the record indicate, Your Honor, I'm showing the form 85 to the officer.

(People's Exhibit No. 4 was thereupon given to the witness)

Q Is that what you told the detective?

A Could you please repeat the question?

Q Did you tell Detective Howell that when you bent down to pick up that envelope that was laying on the driver's side of the vehicle and you looked inside and saw this substance, that this was done incidental to a lawful arrest?

A I don't think it says that here, sir.

Q What does it say?

A It says "the arresting officer also found a quantity of brown greenish substance--" Excuse me. "the arresting officer conducted a lawful search of the vehicle incidental to the arrest, found a quantity of brown -- brownish green substance in canvass bag."

It said that I found a quantity of greenish brown substance in a bag which was incidental to a lawful arrest.

Q An arrest of who?

A Everybody was placed under arrest, sir.

For the People - Haacke - Recross

-56-

Q Well, didn't you just tell me, officer, that when you bent to pick it up you did not have anybody under arrest?

A Nobody was under arrest at that time, sir. It doesn't say that.

MR. ROTH: May I have a few questions ago read back, Your Honor?

THE COURT: Well, I'd like both the officer to read the 85-A and I'd like counsel to read the 85-A and I'd like the district attorney's representative to read the 85-A and then may be questions can be formulated that can be responded to.

MR. ROTH: Before we do that, Your Honor, may I just ask one or two other preliminary questions?

THE COURT: Yes.

Q Officer, is there any mention on the 85-A of an impoundment of a vehicle or an inventory search?

MR. MELNIKER: Objection.

THE COURT: Sustained.

MR. ROTH: May I see the 85-A.

(Said Exhibit was thereupon given to defense counsel)

Q Now, officer, when I commenced my cross examination do you recall, sir, me asking you whether when you asked the people to exit the vehicle, whether they were under arrest and you said no?



A Yes.

MR. ROTH: I have no further questions, Your Honor.

THE COURT: All right.

MR. MELNIKER: Just one moment.

RE-REDIRECT EXAMINATION

BY MR. MELNIKER:

Q With respect to this 85-A that defense counsel has just been questioning you on, it does say "upon exiting the vehicle the arresting officer observed a brown paper envelope containing a brownish green substance lying on the operator's side of the vehicle, lying on the floor," and that refers to which envelope?

A The first envelope I found.

Q That's that small envelope?

A Yes, sir.

Q And it says "the arresting officer conducted a lawful search of the vehicle incidental to the arrest. Found a quantity of a brownish green substance in a canvass bag." What does that refer to?

A The large packet we found in the case. Everybody was already under arrest. I informed them of that.

Q And when you say "a lawful arrest," that refers to the arrest --

MR. ROTH: Objection, Your Honor. He's leading the

For the People - Haacke - Re-Redirect/Re-Recross  
witness.

-58-

MR. MELNIKER: I think the record should be clear with respect to that, Your Honor.

THE COURT: Sustained. I think it's clear.

MR. MELNIKER: Thank you.

THE COURT: Is that it?

MR. MELNIKER: Just one more question.

Q Before you came on the force did you receive training with respect to the identification of controlled substances, particularly marijuana?

A Yes.

Q And you passed that part of your course?

A Yes.

MR. MELNIKER: No further questions, Your Honor.

THE COURT: All right.

THE WITNESS: I'm done?

THE COURT: Yes.

RE-RECROSS EXAMINATION

BY MR. ROTH:

Q Officer, how much training did you have; how many hours did you have officer?

THE COURT: May I suggest this, gentlemen, that we're dealing now with search and seizure. The actual identification of the contraband, should it become necessary, would



For the People - Haacke - Re-Recross  
be an SIB question.

-59-

MR. ROTH: He's trying to make an expert out of him, Your Honor, and I'm not going to concede he's an expert.

THE COURT: I'm not asking you to concede it in view of the statement that I made. If you want to ask him what background he has, go ahead.

MR. ROTH: No. I will concede for the record, Your Honor, for the hearing -- for the purposes of the hearing I'll concede that this is marijuana.

THE COURT: Then --

MR. ROTH: What I don't concede is that he has the ability to know for sure that that was marijuana.

THE COURT: That's fine. That's not for the purpose of this hearing.

MR. ROTH: No, of course not.

THE COURT: You may step down. Watch your step.

MR. MELNIKER: The People call Police Officer Walters.

P O L I C E       O F F I C E R   P E T E R       W A L T E R S ,  
Shield No. 70, Hempstead Police Department, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

THE CLERK: State your full name, spelling your last name.

THE WITNESS: Police Officer Peter Walters, W-A-L-T-E-R-S.

DIRECT EXAMINATION

BY MR. MELNIKER:

Q Patrolman, were you as a member of the Hempstead Police Department on May 16, 1974, at about 1:20, 1:25 in the morning, were you on a tour of duty with Police Officer Haacke?

A Yes, I was.

Q And did there come a time when you came in contact with a person now known to you as Edmund Gettens?

A Yes.

Q Do you see that person in the courtroom?

A Yes.

MR. ROTH: Concede he recognizes the defendant.

THE COURT: So noted.

Q Did there come a time when you and Police Officer Haacke stopped that vehicle that Mr. Edmund Gettens was in?

A Yes.

Q And did there come a time when you heard Patrolman Haacke ask the driver and the occupants if anyone had a license?

A Yes.

Q And did there come a time when Mr. Gettens responded?

A Yes.

Q And what did he answer at first?

A He said he had a license.



For the People - Walters - Direct

-61-

Q And did you say anything to him with respect to that?

A Yes. I asked him if he had a New York State license and he said "yes."

I asked him for his name and date of birth and I told him I could check it with New York State and then he told me he didn't have a license.

Q Did there come a time when the occupants were ordered out of the vehicle?

A Yes.

Q And did there come a time--when you over heard that conversation and when you had the conversation with the defendant were you standing with Patrolman Haacke?

A Yes.

Q Did there come a time when you moved to the right front passenger door?

A No.

Q When Mr. Gettens got out of the vehicle where were you located?

A I was in the back of the -- in the back of the -- in the right side in the back. I was walking back towards the police car.

Q And did there come a time when you heard Police Officer Haacke say anything --

A Yes.

Q -- with respect -- what did you hear him say in substance?

A He said he found a brown package with what appears to be marijuana in it.

Q Did there come a time when you patted down Mr. Gettens?

A Yes.

Q And will you tell the Court what you did?

A I placed his hands on the car and I went through his back pockets and I found an envelope with four marijuana cigarettes in it.

Q Now, did there come a time when you and Police Officer Haacke transported defendant Gettens to Hempstead PD?

A Yes.

Q And did there come a time when the defendant and the two other suspects were in the complaint room of the Hempstead PD that you advised the defendant of something?

A Yes. I advised them of their rights.

Q Specifically what rights did you advise them?

A I told them they had the right to remain silent; that if they said anything it could be used against them in a court of law; they have a right to an attorney; if they didn't have and they couldn't afford one one would be appointed for them. And I asked them individually if they each understood what I said to them and they responded yes.



Q You asked each individually?

A Yes.

MR. MELNIKER: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. ROTH:

Q Did you then question the defendants?

A I spoke to -- I didn't speak to the defendant. I spoke to another man we brought in.

Q Cruz?

A Cruz; yes.

Q I see. Did you have any conversation with Gettens?

A Not right away. I said -- I said to him, I said "is this your stuff;" You know, referring to the bag of marijuana?

Q Right?

A And he said "yes."

And I said "where did you get it?"

And he said "I can't tell you that"

Q And was Patrolman Haacke in the room at that time?

A To the best of my -- I can't recall if he was there or not.

Q Were you alone in the room with the three defendants?

A Well, it's a long -- it's a long around about -- about forty foot long.

Q Right?

A And I -- I assume he was there. I can't -- I'm not positive.

Q Is there a desk in the room?

A Yes. There is two desks.

Q Was he sitting at one of the desks; do you know?

MR. MELNIKER: Who is he, Your Honor?

THE COURT: Officer Haacke, I assume.

MR. ROTH: That's what I thought I was talking about; yes.

A I can't recall if he was sitting at the desk or not.

Q Was there any other police officers in the room at the time?

A I can't recall.

Q And did you show the stuff to Gettens when you asked him whether it was his?

A Yes. I think I did.

Q You showed him the stuff you found in his back pocket?

A No. I showed him the big bag.

Q Right?

A And --

Q Did you show him the little manila bag, the one that your partner found on the floor of the car?

A That I don't -- I don't recall.

Q Did you see that package?



For the People - Walters - Cross

-65-

A Did I see it; yes, I saw it.

Q Where was it?

A It --

MR. MELNIKER: At what point, Your Honor?

THE COURT: Sustained.

Q When you were in the squad room there, where was the evidence? It was laying on the desk; wasn't it?

A I don't recall if it was laying on the desk.

Q Was it in your custody?

A I had -- what I had was in my pocket; yes.

Q What did you have?

A The four cigarettes.

Q I see. And where was the bag?

MR. MELNIKER: Objection. Asked and answered, Your Honor.

THE COURT: Sustained.

Q Well, you say you showed him the bag; didn't you?

A Yes, I did.

Q So you had that too in your possession; didn't you?

A At one time; yeah.

Q At the time you showed it to him and asked him whether it was his; right?

A Yes.

Q Now, let's go back to the scene of the encounter. You pulled up behind this vehicle downtown Hempstead?

A Yes.

Q And both of you got out of the police car?

A Yes.

Q And did you both approach the suspect vehicle on the driver's side, on the passenger's side or one on each side?

A I think we both were on the driver's side.

Q I see. And did you hear Patrolman Haacke ask the driver for his license and registration?

A Yes.

Q Did he come up with the registration?

A Yes, I think so.

Q Did you see the registration?

A To the best of my knowledge I say yes.

Q There was no problem with the registration; was there?

A No.

Q No. Did he also come up with an insurance card?

A I -- I can't recall the insurance card.

Q Did you ask him for an insurance card?

A I can't recall that either.

Q Did you hear Patrolman Haacke ask him for an insurance card?

A I can't recall that.

Q I see. So that there was no question about his identity: was there?



A Of the driver?

Q Yes.

A No.

Q All right. And, incidentally, how long have you been a police officer?

A About eight and a half years.

Q I see. All this time in Hempstead?

A Yes, sir.

Q And, actually, what was your purpose in stopping the car initially?

A Well, the car had loud mufflers on it.

Q I see. And is that a misdemeanor?

MR. MELNIKER: Objection.

THE COURT: Sustained.

MR. ROTH: I'll ask the Court to take judicial notice that that is an offense, a violation of the V and T.

Q And is that the type of offense that you ordinarily give a ticket for?

A Yes.

Q In your eight years you've never arrested anybody for a loud muffler; have you?

MR. MELNIKER: Objection.

THE COURT: Sustained.

Q Now, when you ascertained that the driver only had a

For the People - Walters - Cross -68  
learner's permit and that none of the other two individuals  
had a valid license did you hear Patrolman Haacke order the  
three individuals out of the car?

A I can't recall hearing it.

Q Did you order them out of the car?

A No, I didn't order them out.

Q Did they get out voluntarily; do you know?

A Yes.

Q Pardon me?

A Do you mean -- I didn't -- I don't recall hearing him,  
you know, ask them to get out of the car but when they got  
out of the car they just, you know, got out of the car.  
I didn't; no.

Q All right. And at that point you started walking back  
to the police car; is that correct?

A No. I was walking around to the rear of the car. I was--  
I wasn't walking to the police car. I was just walking to the  
rear of the -- of the car.

Q Of the Chevy?

A The Chevy; right.

Q For what purpose, sir?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

Q Did you see Patrolman Haacke lean into the car and



For the People - Walters - Cross  
retrieve the small brown manila envelope?

-69-

A No.

Q When the individuals got out of the car were they  
under arrest?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

MR. ROTH: May I ask Your Honor is Your Honor sustaining  
that objection on the basis that Your Honor is going to  
make a determination as to whether or not they were  
under arrest?

THE COURT: No.

MR. ROTH: Pardon?

THE COURT: No.

MR. ROTH: Well, I respectfully submit, Your Honor, that  
it's vital to the question of search and seizure as to  
whether or not these people were under arrest.

THE COURT: Well, that might be true. I'm not quarreling  
with that.

Q Did you arrest the defendants as they got out of the  
car or before they got out of the car?

A Did I arrest them before they got out of the car?

Q Yes.

A No.

Q Before they got out of the car do you know whether your

For the People - Walters - Cross  
partner arrested all three individuals?

-70-

A I don't think he -- I'm not sure. I don't know.

Q Pardon?

A I would say no.

Q All right. Now, when the three of them got out of the car did you arrest any of the three?

A At what point?

Q When they got out of the car?

A No.

Q Do you know whether or not your partner arrested any of the individuals as they got out of the car?

A No.

Q Did you have a conversation with Patrolman Haacke with respect to issuing a summons to Cruz for an improper license?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Overruled.

A I think -- I assume I must have told him that we're going to issue a summons for operating without a license.

Q An improper license, actually. He had a learner's permit.

A It's not a license.

THE COURT: He didn't have a license.

MR. ROTH: Pardon?

THE COURT: He didn't have a license.



For the People - Walters - Cross

-71-

MR. ROTH: He didn't have a valid operator's license?

THE COURT: Now you have it.

THE WITNESS: Right.

Q That's a ticketable offense; is that right?

MR. MELNIKER: Objection, Your Honor. I don't know what that means.

THE COURT: Sustained.

Q Now, lastly, officer, before coming to court -- when did you learn that you had to come to court today?

A Yesterday, around -- around two o'clock, I guess.

Q Okay. And between then and testifying here today did you examine any documents to refresh your recollection with respect to your testimony?

A Yes.

Q What did you examine, sir; your memo pad?

A This right here.

Q That's all; right?

A Yes, sir. This book right here.

Q You didn't testify before the grand jury; did you?

A No, I didn't.

Q Okay. May I see your memo pad?

MR. ROTH: May we have it marked for identification, Your Honor?

THE COURT: People's 6 for identification.

For the People - Walters - Cross

-72-

(Said item was thereupon marked as People's Exhibit

No. 6 for identification)

THE CLERK: People's 6 for identification, two pages,  
policeman's notebook.

Q Now, I notice, officer, that you have a notation in  
your book to the effect that "when exiting motor vehicle

P iced Officer Haacke observed a brown paper envelope contain-  
ing a brownish green substance lying on the floor of the  
motor vehicle."

Haacke told you that, you don't know that of your own  
knowledge; do you?

A No. That's what he said; yes.

Q Right?

A Right.

Q You didn't see him find it; did you?

A No.

Q Now, after you searched the defendant you found some  
rolled up marijuana cigarettes in his pocket; do I understand  
you correctly?

A Yes.

Q And there was some marijuana found in a bag in the  
vehicle?

A Yes.

Q And in a small manila envelope; right?



For the People - Walters - Cross

-73-

A It was in a plastic envelope.

Q I'm talking about the one that Police Officer Haacke found on the floorboards, the first one?

A Oh, the first one; yes. That was in a brown envelope.

Q Now, at the scene there did either you or Patrolman Haacke ask the three individuals who it belonged to?

A I don't recall. I know they said they don't know where it came from. I know Cruz said "It's not mine. I don't know where it comes from," you know. But as far as asking them who it belonged to, I don't recall asking them that.

Q Well, did Cruz blurt this out or did you say "is this yours?"

MR. MELNIKER: Objection, Your Honor. It's immaterial.

THE COURT: Sustained.

Q In other words, officer, do I -- you may have your book back.

MR. ROTH: Please let the record indicate I'm returning the book, the memo pad to the officer, Officer Walters.

Q Would I be correct in saying that you made, either you or your partner made an effort to ascertain who the stuff belonged to right then and there by questioning the defendants?

MR. MELNIKER: Defense counsel is referring to defendants.

We have one defendant in this case.

THE COURT: Sustained.

For the People - Walters - Cross

-74-

MR. ROTH: I'm sorry. I apologize, Mr. Melniker.

THE COURT: You don't have to. I sustained the objection.

MR. ROTH: All right. Okay.

Q Is it true, officer, that either you or your partner made an effort to ascertain whether the stuff found belongs to the defendant or to one or both of the other two individuals?

MR. MELNIKER: Objection, Your Honor. Asked and answered, and immaterial.

THE COURT: Well, I'll sustain it as to form. Rephrase it.

Q Did you ask the defendant whether any of that marijuana belonged to him?

MR. MELNIKER: Asked and answered. Objection.

THE COURT: No. That's overruled.

A Any -- which one? Which --

Q Mr. Gettens?

A I know the defendant but which -- there were three different parts.

Q Any one of them. Any one of the three exhibits?

A At what point?

Q Right there in the street.

A You mean --

THE COURT: Other than the marijuana that you found on his person, meaning the defendant's person, did you



then take any of the other contraband and address any remarks or questions to the defendant with reference to the ownership of it?

THE WITNESS: Well, I asked him for the stuff that was in his pocket, that I found in his pocket.

Q What did you ask him?

THE WITNESS: I opened it up and I see he got four -- you know, there is four cigarettes in here. And he just, -- you know, he just started -- shall I say what?

THE COURT: Yes. Did you ask him anything about those?

THE WITNESS: I asked him about the cigarettes and he just started -- he started crying. He said -- oh, I don't recall his exact words but he said -- I know he said "oh, let me go. It's only four cigarettes."

And he started crying.

Q Well, what about the marijuana or the suspected marijuana in the plastic bag; did you show that to him?

A No, I didn't have it at that time. I didn't ask him; no.

Q I see. Did Patrolman Haacke show him the plastic bag, referring to Mr. Gettens, and ask him if that was his?

A I think -- I think he did because it was his night bag. He said "is this your night bag?"

And I think he said -- he said "is this your night bag,"

For the People - Walters - Cross

-76-

and he said "is this yours," and I don't remember the response

but I think -- I'm almost positive he asked him.

Q I see. It was like a plastic handbag; is that what it was?

A It was -- I don't know about that size. Like an overnight bag you'd take on a trip. It was plastic with a zipper going around the top.

Q And inside of that was where some of the marijuana was found; is that right?

A That was the plastic bag; yes.

Q The plastic bag containing marijuana?

A Yes.

Q Now, after you found the -- withdrawn.

MR. ROTH: I have no further questions, Your Honor.

MR. MELNIKER: No further questions, Your Honor.

THE COURT: All right. You may step down, officer.

Thank you very much.

THE WITNESS: Thank you.

THE COURT: Is that it?

MR. MELNIKER: No. We have one more witness.

THE COURT: Bring him in.

MR. MELNIKER: The People call Detective Howell.

D E T E C T I V E     R O B E R T     H O W E L L , Shield

No. 362, attached to the tThird Squad, Nassau County



For the People - Howell - Direct

-77-

Police Department, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

THE CLERK: State your full name, spelling your last name, your Shield No. and your command.

THE WITNESS: Detective Howell, Robert. H-O-W-E-L-L.  
Shield 362, Third Squad, Nassau County Police Department.

DIRECT EXAMINATION

BY MR. MELNIKER:

Q Detective, did there come a time when you received a notification on May 16, 1974, to respond to the Hempstead Police Department with respect to an investigation?

A Yes, I did, sir.

Q And about what time did you arrive there if you did arrive?

A I got there about one o'clock in the morning.

Q One o'clock or two o'clock?

A I'm sorry. I got the call, it was about a half hour -- about two o'clock it was; right.

Q And did there come a time when you came -- with respect to that notification that you came in contact with a person now known to you as Edmund Gettens?

A Yes, I did.

Q Do you see that person in the courtroom and if you do would you identify him?

For the People - Howell - Direct

-78-

A It's the gentleman sitting at the back table there.

MR. MELNIKER: May the record disclose identification,  
Your Honor?

MR. ROTH: Concede.

THE COURT: All right.

Q Would you tell us where you first came in contact with  
defendant Gettens?

A In the Hempstead Police Department, downstairs.

Q And where was defendant Gettens when you first saw  
him?

A He was sitting in one of the offices downstairs.

Q And did there come a time when you had a conversation  
with him?

A Yes, sir.

Q Prior to that conversation what if anything did you  
advise him?

A Well, I advised him of his rights, sir.

Q Specifically what rights?

A I advised him that he had the right to remain silent;  
that anything he might say could be used against him in court.  
I advised him that he had a right to an attorney and that if  
he couldn't afford an attorney one would be presented -- one  
would be presented by the court. I also advised him that he  
didn't have to say anything unless he had an attorney present



For the People - Howell - Direct

-79-

and he didn't have to make any statements. I asked him if

he wanted one present and he said no.

Q Did he indicate that he would talk to you?

A Yes, he did.

Q How did he indicate that?

A I asked him if he was willing to make any statements and he said "yes."

Q And what did he say to you and what did you say to him?

A At the time we were discussing about -- we were discussing the involvement that he had with the Hempstead Police Officers, that marijuana was found in the car. And at this time I told him that him and -- him and both his friends were going to be arrested. And he told me that his two friends didn't have anything to do with it. They had no knowledge of the marijuana in the car.

Q Did you then have a discussion with him with respect to whether he would give you a written statement?

A I then asked him if he would give me a written statement to this effect and he said that he would.

Q And did there come a time when portions in that oral conversation -- did there come a time when portions of the oral conversation were reduced to writing?

A Yes, they were, sir.

MR. MELNIKER: May I have this marked for identification?

For the People - Howell - Direct

-80-

THE COURT: People's 7 for identification.

(Said document was thereupon marked as People's Exhibit  
No. 7 for identification)

THE CLERK: People's 7 for identification, one hand  
written statement.

THE COURT: How many pages?

THE CLERK: Three pages.

Q I ask you to look at People's 7 for identification  
and I ask you what do you recognize that to be?

A This is the hand written statement that I took from  
Edward Gettens.

Q And whose signatures appear on that statement?

A Edward Gettens', myself as a witness and Patrolman  
W. Haacke as a witness.

Q Did you observe the defendant sign that statement?

A Yes, sir, I did, sir.

Q Prior to signing the statement did you read that  
statement to the defendant?

A Yes, I did.

Q Did the defendant then read it to himself?

A Yes, he did, sir.

Q Did you ascertain whether the defendant could read  
and understand English?

A Yes, sir. I asked him if he could and he told me that



For the People - Howell - Direct  
he could.

-81-

MR. MELNIKER: Offered in evidence, Your Honor.

THE COURT: Show it to counsel.

(People's Exhibit No. 7 for identification was thereupon  
given to defense counsel)

MR. ROTH: Well, of course, for the purpose -- the  
purpose of this hearing is to determine the admissability.

THE COURT: That's right.

MR. ROTH: And for the purpose of this hearing I make --  
I object to the admissability of the statement. At this  
time I do not object to its admissability for the purposes  
of the hearing only.

THE COURT: All right. People's 7 for identification  
now People's 7 in evidence.

(People's Exhibit No. 7 for identification was there-  
upon marked as People's Exhibit No. 7 in evidence)

Q At any time did you threaten, force or induce by any  
statement the defendant to sign that statement?

A No, sir, I didn't.

Q Or to give you that statement?

A Pardon me, sir?

Q Or do any of those things in order to give you that  
statement?

A No, sir.

MR. MELNIKER: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. ROTH:

Q Officer, how long did it take the defendant to write out the statement?

A Oh, approximately an hour, sir, all told.

Q Pardon?

A The actual writing itself?

Q Yes.

A Oh, approximately forty-five minutes, fifty minutes.

Q I see. You watched him as he wrote it?

A Yes, I did, sir. He didn't write it, sir.

Q Oh, he didn't write it?

A No, sir.

Q Who wrote this?

A I wrote the statement, sir.

Q You wrote the statement, not the defendant?

MR. MELNIKER: Asked and answered. We don't need counsel's--

THE COURT: Yes.

Q Officer, prior to the time that you wrote this statement you questioned the defendant; did you not?

A Yes, I did, sir.

Q Pardon?

A Pardon me, sir?



For the People - Howell - Cross

-83-

Q You gave the defendant the rights that you testified to just now?

A Yes.

Q And you questioned him?

A Yes, sir.

Q And you didn't write the statement until you had completed all the questioning; is that correct?

A Yes, sir.

Q I see. And all of the stuff that we have on the first page with respect to his rights, that was written well after you had questioned him; isn't that a fact?

A The actual writing, sir?

Q Yes.

A Yes, sir.

Q Now, I'm speaking to the business on the first page here relating to his Miranda rights. Do you have it in front of you, officer?

A I have it right here; yes, sir.

Q Do you see the whole first page and part of the second page having to do with the so called Miranda rights?

A Yes, sir.

Q I see. These were written by you after you had completed his questioning and after you had given him the original warning that you testified to; is that correct?

For the People - Howell - Cross

-84-

A Yes, sir.

Q Now, when you arrived at the stationhouse did you have any conversation with anybody relative to this case against Mr. Gettens?

A Yes, sir.

Q Who did you talk to?

A The arresting officer, sir.

Q Specifically who was that?

A Patrolman Haacke. Police Officer Haacke.

Q Did you speak to Patrolman Walters?

A It wasn't necessary, sir, at that point.

Q I see. And you didn't speak to him at all?

A I did later on; yes, sir.

Q All right. Patrolman Haacke gave you the rundown on the case; is that correct?

A Yes, sir.

Q He told you how it came about?

A Yes, sir.

MR. MELNIKER: Objection, Your Honor. This would not be relevant to this hearing at all.

THE COURT: No. That's overruled. That objection is overruled.

Q Now, did you have any conversation with Patrolman Haacke relative to his finding the marijuana in the car?



For the People - Howell - Cross

-85-

A Yes, sir.

MR. MELNIKER: Objection.

THE COURT: All right. He's answered it.

Q What did he tell you?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

Q Did you ask Patrolman Haacke or Patrolman Walters whether they had questioned this defendant before you had arrived?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

Q Did you ask Patrolman Haacke or Patrolman Walters whether they had given him any Miranda warnings prior to your arrival?

MR. MELNIKER: Objection, Your Honor.

THE COURT: That's overruled.

A Could you repeat that question, please?

THE COURT: Yes.

(Said question was thereupon read back by the reporter)

A No, I didn't, sir.

Q So that as far as you were concerned when you gave them, what you call were his rights, and you questioned him, this was the first interrogation of the defendant; isn't that right?

MR. MELNIKER: Objection, Your Honor.

THE COURT: Sustained.

MR. ROTH: I have no further questions of this witness, Your Honor.

MR. MELNIKER: No further questions of this witness, Your Honor.

THE COURT: You may step down, detective.

THE CLERK: The People rest at this time?

MR. MELNIKER: That would be the People's case for this hearing, Your Honor.

MR. ROTH: I should like to say a few words, Your Honor.

THE COURT: You may. As few or as many as you wish.

MR. ROTH: Yes. Firstly, Your Honor, I'll address myself to the question of the suppression of the evidence allegedly found upon the defendant or allegedly attributable to him. We have a situation here, Judge, and the hearing is relatively short, although the hour is somewhat late, where two police officers see a car with a loud muffler and they stop the car and they ascertain that the driver has a learner's permit and there is nobody, no adult with a proper permit. And this I think we all would concede to be a violation of the Vehicle and Traffic Law type of violation that police officers customarily issue a summons. They do not make arrests.



Here is a situation, the classic situation discussed by the New York State Court of Appeals in the recent case of the People against Adams. Now, although the United States Supreme Court in its great wisdom has held that even on a traffic offense a police officer may conduct a search of the vehicle, the New York State Court of Appeals has held that police officers may not use a traffic offense as an excuse or as a predicate to conduct a search, a warrantless search. Now, this is precisely the situation that we have here and I ask this Court to observe and to determine that the New York State Court of Appeals has a constitutional right to set stricter standards upon search and seizure than the minimum standards set by the United States Supreme Court.

THE COURT: That is correct.

MR. ROTH: We have a classic situation here of an automobile being stopped with the driver being liable to getting a couple of traffic tickets for vehicle and traffic offenses. Where a police officer writes out a couple of tickets and sends them on their way. But not this police officer. And I'm not attributing any venal attitude to this police officer. I commend him. He has obviously a well trained nose. We have what I would characterize as over zealousness on the part of a police officer.

He orders the defendants out of the car. Now, I submit to you, Your Honor, that in ordering these defendants out of the car they were not at liberty to leave and they were under arrest. Arrest for what?

For a loud muffler. For no operator's license. The police officer concedes that there is no question of identification. He had a proper registration for the vehicle. He properly identified himself.

He orders them out of the car and then he observes an envelope and he reaches down and picks it up. Now, I don't know what great savant he spoke to between the time of the arrest and the time of his testimony here today. Perhaps he took some of my courses in criminal justice in the Nassau Community College.

THE COURT: He very likely did.

MR. ROTH: And he heard me lecture upon inventory searches and impounding, you know, and I submit to Your Honor that this is sheer nonsense and a travesty on justice. There was no impoundment here. There was no inventory search here. He saw the envelope. He figured that envelope got some stuff in there; reached down; picked it up and looked at it and he found marijuana. And I submit, Your Honor, that this is a warrantless search, not incidental to a lawful arrest and in violation of my client's rights under the



fourth ammendment. A classic warrantless search.

He had no probable cause to believe that a crime was being committed, had been committed or was going to be committed or was being committed in his presence. And to hang this on an improbable inventory search or an impoundment -- his own testimony belies any impoundment. He impounded this car. It didn't stay in his custody. It was never taken to a pound. He admits that in the Hempstead Police Department they call a garage and the garage hauls the car away. As a matter of fact, this car was released to somebody and immediately left his custody. Some other patrolman drove it to the police station. There was no necessity for any impoundment and this certainly was no inventory search. If this was an inventory search he would have taken inventory of the glove compartment. He would have opened the trunk, taken inventory of the trunk. Everything in that car that didn't come from the manufacturer with that car. There was no inventory search here nor was there any impoundment.

This was a warrantless search, not incidental to a lawful arrest, not by consent and not by any of the exceptions to the case law on search and seizure and I submit that the physical evidence here should be suppressed as having been seized in violation of the defendant's constitutional

rights.

I will now address myself to the issue of the so called statement. I submit, Your Honor, that this statement, which for the purpose of this hearing has been marked People's Exhibit 7 in evidence, is the fruit of the poisoned tree.

We have a police officer -- two police officers who after a warrantless search, a search that invaded the constitutional rights and the privacy of these defendants -- of this defendant, they bring him to the police station. One officer, the first officer, Patrolman Haacke, never questioned him. Never heard his partner question him. But he did overhear his partner giving some constitutional rights but he didn't pay attention to it.

Two police officers, three defendants, one giving the constitutional rights and the other fellow, he don't pay attention to the constitutional rights. So he gives us some constitutional rights but, unfortunately, he omits to say that his partner warned the defendant that anything that he said could be used against him.

When Patrolman Walters took the stand the advice he gave the defendant or that he testified he gave the defendant was somewhat better, although who is telling the truth here; the first officer or the second officer?



Who are you going to believe?

Is this the quantum of proof?

Is this the satisfactory evidence that the People require to sustain the taking of statements and taking inculpatory statements from a defendant?

One officer says they never showed him the stuff. They questioned him. The second officer says certainly they questioned him. He showed him the stuff that he took out of his pocket. He showed him the bag from which they retrieved -- the plastic bag with the grass, the pot, whatever you want to call it; the marijuana. I assume it's marijuana, for the purposes of this hearing in any event.

You have two police officers telling stories, conflicting stories that are not possible to jibe, one with the other. Two completely conflicting stories. Then we compound it by having a detective -- we have a detective take the stand there. Here is a man with a gold badge and he testifies that he gives the Miranda warnings. And what Miranda warnings does this detective give?

He tells the defendant that he's entitled to see a lawyer and that if he couldn't afford a lawyer the Court will provide him with a lawyer. What court?

After he's taken to court, after he's questioned?

He doesn't tell the defendant that he's entitled to speak

to a lawyer before he's questioned and if he can't call a lawyer that he can pay to come down that the police are obligated to get a lawyer for him free of charge before he's being questioned; not the Court.

However, when he gets around to writing the actual statement, see, then he takes the Miranda card out of his pocket and he copies it either word for word or he's very, very sure that all of the essential elements of the Miranda warnings get into the statement.

I submit, Your Honor, that the written Miranda warnings in the statement are after the fact. This is after the defendant has been questioned and they're of no consequence and they play no part in this case at all.

The important part of this case with respect to the suppression of these -- of this statement is the warnings that the officer gave him before he interrogated him, not when he wrote out the statements. And I submit to Your Honor that the warnings that he gave the defendant were not consistent with either the letter, the law or the intent of Miranda against Arizona or any of the following cases commenting upon the same.

I respectfully urge Your Honor to suppress the physical evidence and to suppress any and all statements taken from this defendant, oral or written.



MR. MELNIKER: Mr. Roth has referred to the classic situation, the overzealousness of these police officers. I could not agree more whole heartedly with respect to it being a classic situation and I would say that it was a classic situation of very fine and good police work. These policemen -- and I don't mean to belabor the facts too much -- but they hear a loud muffler. They stop the vehicle. They ask for registration, license. They get a permit. No one there with a license. It's one thirty in the morning. They're in a no parking zone.

I think it's quite natural and I believe the Police Officer Haacke testified that it is his normal practice, in fact their Hempstead Police Regulations, and that it was his intention to impound this vehicle and that is the reason that he ordered these persons out of the vehicle. At that time making a cursory examination he views this envelope. He could not know what was in it at that time. It could be contraband. It could be jewels. It could be a thousand dollars. In order so as not to belibel it at a future date he takes reasonable precautions, reasonable steps, and he looks inside to find what he believes to be marijuana at that time. Based on that and the presumptions in the Penal Law all three persons are placed under arrest. Flowing from that arrest a search incident thereto, four

cigarettes were found on the person of the defendant and a bag of marijuana is found in the vehicle.

I believe defense counsel has tried to cloud the issue, to confuse the issue by referring to the Adams' case, the Marsh case, the recent Supreme Court cases. That is not the issue in this case. Rather I would refer the Court to People v. Sullivan, 29 N.Y.2d. I believe that is the case that speaks on point. That the police having a procedure to impound, the police officer testifying that he would be responsible, that he made the decision to impound then takes the necessary precautions so that the tow truck operator -- so that no one has access to any of the contents that are readily available in that vehicle from the time it leaves his scrutiny at the scene until it gets to the police station. I think it's perfectly normal. I think he acted reasonably in what he did at that time.

Mr. Roth seems to make an issue of the fact that there was no evidence that an actual procedurally correct inventory was carried out. Well, it's very simple. The finding of the marijuana interrupted the orderly process that would have taken place at that time. Of course, there is no evidence but Mr. Roth has commented so I shall comment briefly.



Perhaps if no contraband had been found a tow truck would have been called and towed it to the police station. Perhaps the defendants would have been released, either at the scene or the police station. However, because contraband was found other police officers arrived and this is normal in an arrest of a vehicle situation.

A police officer drove the vehicle to the police station and that is the reason that we have no great testimony with respect to any inventory that occurred. Perhaps it did, perhaps it did not. There is no testimony on that point. Naturally, as always, the credibility of the witnesses is paramount. And the Court can judge for itself the credibility of the witnesses, particularly Police Officer Haacke.

I would come to the complete opposite conclusion of Mr. Roth with respect to his veracity and with respect to recent fabrications. Mr. Roth seemed to make a great issue of the fact that the word impoundment had never been referred to, at least as far as Mr. Roth was concerned, with respect to the grand jury minutes, form 85, et cetera. I see no great problem with that. Especially when grand jury testimony is kept to the bare minimum. Very brief. Only to get probable cause. Certainly all the issues that we have gone into at this hearing are not necessary or required

in the grand jury testimony. With respect to any omission -- apparent omissions in the prior statements, the fact that they are there or not I don't believe is of any significance. The Court can draw its own conclusion with respect to this, whether this is a police officer coming up with this theory to justify an arrest. And I would suspect that that would be the crucial issue.

With respect to the statement, it is Police Officer Haacke's testimony that he observed at least part of Patrolman Walters' advisement to the defendant. Patrolman Walters testified he asked each defendant if he understood. Of course, no statements were taken at that time.

Police Officer Howell is on the scene. He testifies he gives the oral statement in a one to one conversation with the defendant. He indicates the defendant understands. And I don't believe there was any rebuttal of those facts from the -- from the defense on the witness stand. He gave him his rights. He consented. And I think the fact that there was an extra sentence, an added sentence in the statement which specifically excludes, exculpates Mr. Gettens' passengers from any knowledge or possession of the marijuana clearly shows that Mr. Gettens knew exactly what he was doing and that he was not being forced to do it. He was taking the weight for his friends and that was his pleasure.



And I think that would substantiate the voluntariness, the knowingness, the intelligent waiver of any rights the defendant would have at that point.

The fact that there perhaps was some minor inconsistencies with respect to what one officer heard or what one did not, I don't believe is paramount or particularly relevant at this hearing. Naturally, we always have small inconsistencies because one person said he did not hear something, a certain right given, or his full attention was not directed; I don't believe its particularly compelling with respect to a correct decision in this case.

In conclusion, I should only say that the People would oppose suppression of either the physical evidence or the statement. There was no attack upon the voluntariness of that statement and I believe -- I would ask respectfully that the Court perhaps should focus more on the People v. Sullivan impoundment issue rather than defense counsel would have with the searches incident to an arrest, for that is not what we have here. Thank you.

MR. ROTH: I just have one short rejoinder, Your Honor. People against Sullivan is probably the leading case on inventory searches in New York State and if I correctly recall People against Sullivan, a gentleman was arrested for the commission of a crime as opposed to a V and T

violation. I don't remember whether it was a misdemeanor or a felony. And the car was then towed to the police station and the car was being impounded and held for evidence. And then while the defendant was in the police station two police officers went out behind the police station and they opened the car, they tore the seats out, they opened up the trunk and in the trunk of the car they found some narcotic substance. And this was held to be a valid search, that this car was already impounded, being held for evidence and under the police department rules and regulations of the City of New York where this occurred it was incumbent upon the police officers where a vehicle had been impounded to make an inventory of its contents and to safeguard any contents. And this is not the situation here. To contrast People against Sullivan with the cursory steps that this police officer made, the tentative and cursory -- to call that an inventory search is absurd and, I submit, a travesty on justice, Your Honor, and a very poor excuse to hang an illegal search on someone.

MR. MELNIKER: If I might just add one statement, Your Honor, with respect to what could have occurred at the police station. Certainly if it occurred at the street in this limited way it would certainly have no effect on the central issue of People v. Sullivan. What they could



have done at the police station they could have done there and I think they acted reasonably in this particular situation.

THE COURT: My recollection of People against Sullivan does not coincide with the recollection or the resitation of the Sullivan Case by counsel for the defendant but be that as it may, the defendant's motion through counsel to suppress the physical evidence as well as the statement as fruit of the poisoned tree at the close of the People's case for all the reasons stated by counsel in support of both motions is denied.

MR. ROTH: Respectfully except, Your Honor.

THE COURT: Does the defendant wish to testify?

MR. ROTH: No, Your Honor.

THE COURT: Defendant rests?

MR. ROTH: Yes, Your Honor.

THE COURT: All right. Both sides having rested the Court now issues the following decision with regard to the defendant's motion to suppress the physical evidence urging People against Adams in support of that contention, urging also People against Marsh, taking the position that the use of the vehicle, of impounding, as means of obtaining the evidence was a violation of the constitutional rights of the defendant has been given consideration by the Court.

The Court from the evidence before it finds that once it was determined that the operator of the vehicle was not licensed to drive and that the two passengers were not licensed to drive, were all directed to remove themselves from the vehicle. It was at this time, according to the testimony of Police Officer Haacke, that he determined to impound the car and effect an inventory search; that in that process and even before that process began, upon the operator of the vehicle exiting the car by reason of the indoor lights in the vehicle as well as street lights which he described as vapor lights similar to daylight, he observed a package on the floor.

It is true that there is no testimony that that package constituted a plastic envelope which on visual contact would reveal its contents. However, premised upon the testimony of the police officer at the time of an intended inventory search, which I might add becomes suspect in any situation where contraband is eventually found, but which must be resolved on the probabilities at the time they are taking place constituted at the time in the Court's opinion an effort to effect an inventory search for purposes of impoundment.

Under the authority of People against Sullivan the Court of Appeals has sustained the position of police in properly



safeguarding the property of the owner of the vehicle through the procedure known as impounding and the taking of inventory. A strong dissenting opinion in Sullivan holds that impounding is simply another word or another means of justifying an illegal search. Until such time as that determination of the dissenting opinion becomes the law of the State of New York the People against Sullivan holds that an inventory search when effected for purposes of impounding a vehicle is legal.

The Court finds from all of the testimony not refuted and reasonably to be drawn from same premised upon credibility that in fact the actions of Patrolman Haacke constituted an inventory search which revealed during that process the contraband which then interrupted the impoundment proceeding resulting in the arrest of the defendants, more particularly the defendant Edmund Gettens present before this Court.

Concerning the suppression of the statement on the premise there was a violation of the defendant's constitutional rights set forth in People against Huntley and other cases therein following premised upon the fruit of the poisoned tree, this Court finds no evidence to support such a conclusion. There is no doubt that the testimony of the officers was not consistent to the point of repetition , that

counsel for the defendant did in fact develop discrepancies in the testimony of both witnesses but in the opinion of the Court not sufficient to probe the veil of truthfulness.

The Court finds from the evidence that the defendant was properly advised as to his rights and did knowingly waive his rights and he gave the statement which has been admitted in evidence as People's 7.

This constitutes the decision and the determination of the Court with reference to the motion to suppress the physical evidence and to suppress the statement taken from the defendant.

THE CLERK: Do you want to set a trial date, Your Honor?

THE COURT: I assume we're going to trial. Can we start tomorrow?

MR. ROTH: I can't.

THE COURT: Would you both step up here, please.

(A discussion was thereupon held at the bench not within the hearing of the reporter)

THE COURT; October the 2nd. Prior custody continued.

MR. MELNIKER: I just want the record to reflect that the People are prepared to proceed to trial tomorrow.

MR. ROTH: We waive a speedy trial.

THE COURT: No problem.



THE CLERK: Is that by consent, gentlemen, the trial date?

MR. MELNIKER: The People are prepared to proceed tomorrow.

THE COURT: And there was a waiver of speedy trial by the defendant.

October the 2nd.

(Hearing concluded)

I hereby certify that the above is a true and accurate transcript.

*Gary Tovsky*  
\_\_\_\_\_  
GARY TOVSKY  
Official Court Reporter

***Rule 55. Inventory of Impounded Vehicles***

Vehicles shall be impounded when provided by law or whenever impoundment is necessary to safeguard a vehicle or its contents. It shall be the duty of every member who impounds a vehicle to safeguard valuable personal property that may be contained in such vehicle. The following procedure shall be employed in all cases in which a vehicle is impounded.

1. After impoundment, the member impounding the vehicle shall inventory the contents of the vehicle as soon as practicable.
2. In all cases in which an inventory is conducted, the officer performing such examination shall, without unnecessary delay, make appropriate entries in his memorandum book.
3. The scope of the inventory shall extend only to those areas of the vehicle wherein it may reasonably be assumed that the operator or owner has left valuable personal property.
4. If personal property is discovered during an inventory and the property is of little value or the property is affixed to the vehicle, such property, unless otherwise directed, shall be left in the vehicle; however, the tow car operator or garage custodian as the case may be shall acknowledge the presence of the property in the vehicle by signing the memorandum book of the officer delivering the vehicle to him.
5. If it is necessary to remove valuable personal property from an impounded vehicle (i.e., expensive cameras or jewelry, money, doctor's equipment, etc.) the Duty Officer of the command wherein such property was removed shall make appropriate entries in the Blotter and Impound Book, and if such property cannot be returned to the owner within a reasonable period of time, the Duty Officer shall invoice such property to the Property Room.

**Rules and Regulations of the Village of  
Hempstead Police Department, effective  
June 18, 1974.**